

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6321-CR-HURLEY

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CYNTHIA JOHNSON,

Defendant.

01 MAY -3 2011:02
CLERK U.S. DISTRICT COURT
S.D. OF FLA. - WPB



OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT

COMES NOW the Defendant, CYNTHIA JOHNSON, by and through her undersigned attorney, and files herewith her Objections to the Presentence Investigation Report as follows:

1.

The Defendant objects to paragraph 22, page 6 and the failure to credit her for Acceptance of Responsibility. She denies that she has used marijuana during the pendency of this case. When the probation officer informed her that she had tested positive she offered immediately to come to the office to be retested but the probation officer declined the offer. Further, her sister, Florence Johnson, in the telephone interview with the probation officer was not speaking about any recent personal knowledge of the Defendant having smoked marijuana as Ms. Johnson resides in Arizona and would have no such personal knowledge.

PA
23

The Defendant has accepted responsibility for her actions and has offered to cooperate to try and locate the individual who provided the documents in this case. She should be credited for that acceptance.

Motion for Downward Departure Due to Family Circumstances

As the P.S.I. reflects the Defendant has legal custody of five grandchildren, Kenya (17), Israel (14), Lamuel (12), Alexis (3), Kendria (8), Emanuel Daniel (3) and one adopted son, Keoki (14). The Defendant recognizes that the policy statement contained in U.S.S.G. §5H1.6 states that family ties and responsibilities are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range. The courts have held, however, that the policy statement is not absolute and that there are situations where extraordinary circumstances can be considered for a downward departure. *See e.g., United States v. Cacho*, 951 F.2d 308 (11th Cir. 1992)

The Defendant asks the Court to consider her situation as being unique. If the Defendant is incarcerated there is no one to care for these children. The grandchildren's mother, Evelyn, is a crack addict. One of Keoki's parents is schizophrenic and the other lives in a cave in Hawaii. Surely, this is one of those situations that is extraordinary and the need to protect against the harm to all of these children and the disruption of their lives if the Defendant is incarcerated clearly outweighs society's demand for punishment of the Defendant. Indeed, if a departure is granted to a Zone B level this Court could sentence the Defendant to a period of house arrest that would adequately punish her yet minimize the damage to the children's lives.

Respectfully submitted,



THOMAS F. ALMON
Attorney for Defendant
321 N. E. 26th Street
Miami, Florida 33137
Tel: (305) 576-8568
Fax: (305) 573-6251
Florida Bar # 0153850

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 2
day of May 2001, to Assistant United States Attorney Roger Powell, 500 E. Broward Boulevard,
Seventh Floor, Ft. Lauderdale 33392-3002 and to Tracey L. Webb, U. S. Probation Office, 299
E. Broward Blvd. Room 409, Ft. Lauderdale, FL 33301-1168.



THOMAS F. ALMON